TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Oral reports in self-insured claims

When an employer is self-insured, a worker's oral report of injury to his immediate supervisor and to the company nurse within one year of the injury satisfies the requirements of RCW 51.28.020 and RCW 51.28.050 for filing a timely claim.*In re Russell Craft*, **BIIA Dec.**, **54,919** (1980) [dissent] [*Editor's Note: Overruled, In re Eugene Whalen*, BIIA Dec., 89 0631 (1990).]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

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IN RE: RUSSELL FRANCIS CRAFT

DOCKET NO. 54,919

CLAIM NO. S-290021

DECISION AND ORDER

APPEARANCES:

Claimant, Russell Francis Craft, by Rudolf L. Mueller

Employer, Weyerhaeuser Company, by Ryan and Ellis, per Roger C. Ryan

This is an appeal filed by the claimant on July 16, 1979 from an order of the Department of Labor and Industries dated May 18, 1979, which adhered to a prior order of the Department of Labor and Industries rejecting the claim on the ground that the claim had not been filed within one year after the date upon which the alleged injury occurred. **REVERSED AND REMANDED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order issued by a hearing examiner for this Board on May 6, 1980, in which the order of the Department dated May 18, 1979 was sustained.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The issue presented by this appeal and the evidence presented by the parties are adequately set forth in our hearing examiner's Proposed Decision and Order.

We note that the issue presented by this appeal is extremely narrow in scope, and is limited only to the question of whether or not the claimant "timely filed" a claim for benefits under the Workers' Compensation Act, arising out of an incident which occurred on October 24, 1977, which the claimant alleges to have been an industrial injury. We need not determine whether or not the incident occurring on October 24, 1977 in fact meets the tests of an industrial injury within the meaning of the Industrial Insurance Act, only that a claim arising out of the alleged incident was timely filed.

The question posed by this appeal brings cause for this Board to review a longstanding interpretation of the statutes and case law concerning those portions of the Industrial Insurance Act dealing with the time period for filing a notice and report of accident and application for compensation.

Section 51.28.020 of the Revised Code of Washington sets forth the duty of the injured worker to apply for benefits and states in pertinent part:

"Where a worker is entitled to compensation under this title he or she shall file with the department <u>or his or her self-insuring employer</u>, as the case may be, his or her application for such, together with the certificate of the physician who attended him or her, . . . If application for compensation is made to a self-insuring employer, he or she shall forthwith send a copy thereof to the department." (Emphasis supplied.)

The time period for filing an application for benefits is set forth in RCW 51.28.050:

"No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued."

The statutes quoted seem to direct that the claimant himself or herself has the duty to file an application for benefits within one year of the alleged injury. Cases decided under these statutes in former years have made it clear that the legislature fully intended that claims had to be filed within one year following the date of the "Accident." Ferguson v. Department of Labor and Industries, 168 Wash. 677 (1932); Sandahl v. Department of Labor and Industries, 170 Wash. 380 (1932). The requirement for compliance with the one year requisite has been strictly applied. In fact, the Supreme Court has indicated the Department of Labor and Industries, and by inference this Board, has no power to make any exceptions to the requirements for "equitable" reasons, Leschner v. Department of Labor and Industries, 27 Wn.2d 911 (1947), or to waive the application of the statute since allowance of a claim not filed in a timely fashion is void from the beginning. Wheaton v. Department of Labor and Industries, 40 Wn.2d 56 (1952).

In the prosecution of his appeal, Mr. Craft has made no allegation, nor is there any evidence to support an allegation, that the limitation period should be tolled for him due to any unsoundness of mind as was the case in <u>Ames v. Department of Labor and Industries</u>, 176 Wash. 509 (1934), during the one-year period in question.

With respect to an employer's or physician's duty to report injuries on behalf of workers, the court's decision in <u>Pate v. General Electric Company, Inc.</u>, 43 Wn.2d 185 (1953), has heretofore been dispositive of the type of issue presented by this appeal. In that case, the court noted the employer under RCW 51.28.010 was only required to <u>report</u> an accident, and found that there was no statutory duty for an employer to file a claim for compensation for an injured worker. In that case, no report was filed, but even if it had, it would not have helped the injured worker since the exclusive manner to

secure compensation in any particular case was by the filing of an <u>application</u> for benefits. The Court stated:

"The right to benefits under the Act must be founded upon a <u>claim</u> therefor, not upon a report of the accident to the department of labor and industries." (Emphasis supplied.)

With respect to the physician's role in securing compensation for injured workers, the court in the <u>Pate</u> case stated a physician's duty to inform the claimant of his or her rights under the Act arises only after a "certificate of the physician" is requested by the claimant. Yet the court stated even that duty is limited:

". . . It is not the purpose of the statute to place upon a physician the primary duty of timely instituting a claim on behalf of the workman or of advising him that he should, or should not, make such claim. The responsibility of initiating a claim is upon the workman. . ."

The court went on to suggest that if the result was to be any different, the legislature should amend the statute to case a positive duty upon physicians and employers to relieve the burden of the injured worker for filing claims.

Since the <u>pate</u> case, decided in 1953, RCW 51.28.010 was amended. However, it does not appear that such amendment would in any way have changed the result in <u>Pate</u> inasmuch as the amendment does not affect the duty of the employer or the physician. Primarily because of the court's holdings in <u>Wheaton</u> and <u>Pate</u>, members of this Board have long held, albeit not unanimously, that the burden is upon the worker to file an application for benefits with the Department within one year of his alleged injury. However, in 1971, the legislature amended several portions of the Industrial Insurance Act with the advent of the self-insured employer in this state. The question actually raised by this appeal is one which asks whether the advent of self-insurance changed the burden on a worker employed by a self-insured employer in reporting industrial injuries to the Department of Labor and Industries.

The cases cited thus forth in this opinion all predate the concept of self-insurance in this state. Prior to the appearance of the self-insured employer, a worker was considered to be on a one-to-one relationship with the Department of Labor and Industries. Benefits under the Act flowed directly from the Department to the worker and not from the employer itself. The employer and the employee paid for those benefits with periodic payments into the accident and medical aid funds. The certification of self-insured employers changed this "flow" of benefits. Employees of self-insured businesses who

become injured during the course of their employment now receive benefits directly from the employer. The administration of these claims within the Department of Labor and Industries is conducted by a separately managed section from "state fund" claims with which the self-insured employer directly communicates.

Once certified for self-insurance, employers use their own staff or contract with a professional service company to adjust their insurance claims. This process effectively separates the worker even further from the administration of the claim conducted by the self-insured section of the Department of Labor and Industries. The statute still requires the Department to be responsible for the adjudication of all claims, but the Department does not bear the sole responsibility for compiling the claim file. It is dependent upon the self-insurer to provide the necessary information upon which to base its adjudicative decisions.

We take judicial notice that special "self-insurer accident report" forms have been printed by the Department (Form No. LI-207-2 SI Accident Report 5-78). The statute requiring a worker to file an application for compensation does not, however, require the use of any specific form. It can be inferred from the duty to file an application "together with the certificate of the physician who attended him" that some written instrument eventually be used. The question which we are called upon to decide in this appeal concerns whether an effective application for compensation was made by Mr. Craft with his self-insured employer within one year of Mr. Craft's alleged injury. For if he did not, his claim must surely fail because no application for benefits was received by the Department of Labor and Industries until well after a year had transpired.

In the case before us, the claimant alleges that he injured his back in the course of his employment on October 24, 1977, and on that date notified his immediate supervisor, Lloyd Joyce, who was the claimant's supervisor on that date for the reason that Lowell J. Bagley, the claimant's foreman, was on vacation. When Mr. Bagley returned to the plant, he noted that the claimant had not returned to work, and requested a Mrs. Torrance, a registered nurse at the Weyerhaeuser plant, to call the claimant and ascertain his problems. She did this on November 16, 1977, and at that time ascertained that the claimant had injured his back, noting in her ledger that Mr. Craft's claim that he had injured his low back allegedly in the course of his employment.

Having been made aware of Mr. Craft's "claim", we believe the purposes of the Industrial Insurance Act would raise a duty upon the self-insured employer to inquire whether such injury necessitated the receipt of medical treatment, required hospitalization, and/or caused the claimant to be disabled from work. If so, the employer should have advised Mr. Craft that if he intended his claim to be one for industrial insurance compensation, a certification from his physician would be necessary. To not so require such a duty upon a self-insured employer would effectively leave the duty of claims' adjudication solely with the self-insured employer, a circumstance not to date intended by the legislature.

RCW 51.28.020 as earlier quoted indicates that if application for compensation is made to a self-insuring employer, "he or she shall forthwith send a copy thereof to the department." We believe the pronouns "he" or "she" were intended by the legislature to refer to the self-insuring employer and not the worker¹, thus placing the duty for notifying the Department of pending claims directly upon the self-insuring employer and relieving the claimant/worker of such a duty. We do not think the legislature intended that the claim of an employee of a self-insured business should be defeated for failure of that business to file a copy of the worker's application for benefits with the Department of Labor and Industries.

Further, we believe a burden of deeper inquiry rests with a self-insured employer when given sufficient notice of a potential claim for injury because of its obligation under RCW 51.28.025 to report injuries or occupational diseases to the Department. That section of the statute although not limited to self-insured employers states in pertinent part:

"Whenever an employer has notice of knowledge of an injury or occupational disease sustained by any workman in his employment who has received treatment from a physician, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, he shall immediately report the same to the department on forms prescribed by it...."

Given the facts of a claimant's report of injury to his immediate supervisor on October 24, 1977, followed by the plant's nurse's inquiry to the thereafter absent Mr. Craft, constituted sufficient notice that a claim was intended and constituted sufficient notice for the employer to fulfill the duty placed upon it by RCW 51.28.025. Had this been done, we are confident that the Department would have taken the initiative under RCW 51.28.010 to inform Mr. Craft in non-technical language of his rights. In effect, the self-insured employer had knowledge of an alleged injury, did not make inquiry of its

¹ Another example clearly revealing the use of the pronoun "he" to be in reference to the employer is contained in RCW 51.28.025.

significance even though it had knowledge that the injury allegedly caused the claimant to be disabled from work and allegedly occurred during the course of employment. Under the circumstances present in this claim and inherent in the duties of self--insured employers, we do not believe Mr. Craft's claim for injury of October 24, 1977 can be defeated simply by the employer's failure to act.

The Department's order of May 18, 1979, effectively rejecting the claim, for the stated reason that Mr. Craft had not filed the same within one year after the date upon which the alleged injury occurred, should be reversed and this claim remanded to the Department with instructions to advise the self-insured employer to process the claim as one which was timely filed.

FINDINGS OF FACT

- 1. On January 9, 1979 a report of an industrial accident was received by the self-insured employer alleging an industrial accident to have occurred to the claimant, Russel F. Craft, on October 24, 1977 while employed by Weyerhaeuser Company, a self-insured employer under the Industrial Insurance Act. On January 23, 1979 a copy of the report of accident was received by the Department of Labor and Industries. On March 26, 1979 the Department rejected the claim on the basis that no claim had been filed within one year after the date on which the alleged injury was alleged to have occurred. On April 18, 1979 there was a request for reconsideration. On May 18, 1979 the Department issued an order adhering to the March 16, 1979 order and indicating that the claim would remain rejected pursuant thereto. On July 16, 1979 a notice of appeal was received on behalf of the claimant and on July 25, 1979 the Board granted the appeal.
- 2. The self-insured employer had been informed by November 16, 1977 that the claimant had injured his back allegedly in the course of his employment on October 24, 1977, which injury had also allegedly caused him to be disabled from work.
- 3. The claimant's report of injury to his immediate supervisor, on October 24, 1977, and subsequent conversation regarding the circumstances and extent of such injury with the company nurse constituted sufficient notice to the self-insured employer to institute processing of a claim for industrial insurance benefits.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of this appeal.

2. The order of the Department of Labor and Industries dated May 18, 1979 should be reversed and this claim remanded to the Department with instruction to advise the self-insured employer to process this claim as one which was timely filed.

It is so ORDERED.

Dated this 27th day of October, 1980.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/	
MICHAEL L. HALL	Chairman

/s/____ SAM KINVILLE

Member

DISSENTING OPINION

The hearing examiner's Proposed Decision and Order with respect to Claim No.S-290021 should be sustained. To do otherwise removes the guidepost of statute and years of practice from the determination of eligibility under Washington compensation law.

Would the majority take the position that, prior to the advent of self-insurance, verbal notice to an agent of the Department of Labor and Industries would preclude the necessity for filing of an application for benefits under Washington compensation law? To say "Yes", or to take the position of the majority, opens the door to a multitude of possibilities and contentions as to adequacy of the required notices.

Dated this 27th day of October, 1980.

<u>/s/</u> SAM KINVILLE

Member